THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.28145 of 1997

Date: 14.03.2007

Between:

Bayana Narayana Rao and others.

....Petitioners

And

The Special Officer-cum-competent authority.

....Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.28145 of 1997

O R D E R:

The sole petitioner died and his legal representatives were brought on record.

The petitioner is the owner of land, admeasuring Ac.4.12 cents, in Survey No.5/1 of Gullapalem Village and Survey No.37/3 of Mulagada Village of Visakhapatnam District. Since the lands are within the Visakhaptnam Urban Agglomeration, the petitioner filed a declaration under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'). It is stated that an extent of 6,024 square meters of land was sold before the notified date i.e. 17.02.1976 and the family was left with the balance of 11,171 square yards.

The declaration was examined and a notice under sub-Section (3) of Section (8) of the Act was issued to the petitioner. He responded with a reply. After due verification and enquiry, the respondent herein passed an order, dated 13.08.1981, under Section 8(4) of the Act,

declaring the petitioner herein as a non-surplus holder.

The elder son of the petitioner, by name Prabhakara Rao, has also filed a declaration, in respect of one-third of the lands held by the family, obviously, on an advise tendered to him. In view of the fact that the family was held to be non-surplus, vide orders, dated 13.08.1981, in the declaration filed by the petitioner, his son does not appear to have evinced any interest, as regards the declaration filed by him. This resulted in a statement under Section 9 of the Act, dated 08.01.1992, indicating that the declarant held an extent of 2571 square meters, in excess of ceiling limits. The subsequent steps under Section 10 of the Act also said to have taken place. The petitioner feels aggrieved by the action of the respondent, in trying to dispossess him from an extent of 2571 square meters, in the light of the facts, referred to above. It is contended that once the entire property was dealt with under a declaration filed by the petitioner, and found as non-surplus, there is absolutely no basis for the same being declared as excess vis-à-vis the declaration filed by the son.

The respondent filed a counter affidavit. It is stated that the son of the petitioner did not turn up, even after receiving a draft statement under Section 8(1) of the Act

and that the same resulted in a finding that he holds an extent of 2571 square meters of land in excess of ceiling limits. It is stated that unless the relevant orders are assailed in an appeal, the petitioner cannot seek the relief prayed for in this writ petition.

Even while the writ petition is pending, a development has taken place, in the recent past. On a representation submitted by the petitioner, the respondent had undertaken verification of the records and local inspection, and addressed a letter, dated 28.06.2006, to the Principal Secretary to Government, Revenue Department, seeking necessary instructions, in view of the fact that the same land came to be dealt with under two declarations. The Government, in turn, left it open to the respondent to correct the mistake.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

The over enthusiasm exhibited by one of the sons of the petitioner had led to a situation, where the entire family has landed in trouble. Obviously, the submission of a separate declaration by the son of the petitioner, appears to be on account of an improper advise tendered to him.

A perusal of the order, dated 13.08.1981, passed by the respondent, under Section 8(4) of the Act, discloses that an exhaustive discussion was undertaken with reference to each and every item, that was sold by the family before the notified date, and those held by them, by the time the declaration was filed. Ultimately, the following finding was recorded:

> *"Thus the objection petitioner is a non-surplus holder. The draft statement U/s.8(1) issued earlier shall be amended accordingly"*

It is noteworthy that the entire land held by the family in Survey Nos.5/1 and 37/3 was dealt with under this order.

The Office of the respondent has the facility of cross verification. However, no attention appears to have been paid in this direction, while processing the declaration submitted by the son of the petitioner. It must be said to the credit of the incumbent, who held Office in the year 2006, that he has taken the trouble of verifying the matter dispassionately and addressed letter to the Government, seeking necessary instructions. He found that the same land was dealt with under two declarations and a patent mistake had occurred. However, since he is not vested with the power, to review the order, he addressed a letter to the Government. The Government, in turn, took the matter under Section 34 of the Act, but directed the

respondent to correct the mistake, after due verification. Inasmuch as the verification is clearly evident from the proceedings, dated 28.06.06, the matter deserves to be given a quietus.

For the foregoing reasons, the Writ Petition is allowed and it is directed that the orders passed by the respondent in C.C.No.2172 of 1976 filed by Prabhakar Rao, Son of the deceased-petitioner, shall be of no consequence; and the findings recorded by the respondent in the order, dated 13.08.1981, passed under Section 8(4) of the Act, in relation to a declaration filed by the petitioner i.e., C.C.No.2173 of 1976 shall remain unaffected. There shall be no order as to costs.

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14.03.2007

JSU